1948.

File No. L.O.R. Accounts 48

Legal Deptt.

C **BRANCH**

Subject:— Correspondence from the Officers and Pleaders relating to account Rules continued in the Law Officers Rules.

L/8/E

File No. L.O.R. Accounts /48

Gen. 194 e.

287-C

Regr. No. 4920-L-6
Government of India,
Ministry of Defence (Army Branch)
New Delhi, the 21st June 1948.

To

The Remembrancer of Legal Affairs, to the
Government of Bombay, (Bombay.

Subject: Civil Suits against the Governor-General of India in courts of Bombay Presidency.

Sir,

I am directed to refer to Rule 184 of the Law Officers Rules for conduct of legal affairs of Government which inter alia provides that in suits against the Governor-General of India, Government Pleaders are to be briefed through the Legal Remembrancer and not directly by the officials concerned of the Government. In practice, however, it is found that strict adherence to this rule entails many practical difficulties. Very often intimation regarding hearing of suits is received so late that if the prescribed channel of communication to the Government Pleaders is adopted many of the suits will go un-represented.

It is therefore proposed to obtain your views in making an exception to the observance of these rules for practical considerations as mention d above. It is likely that some Government Pleaders, not knowing the situation, are likely to insist upon the strict adherence to this rule. However, if you have no objection, the Government Pleaders in your Presidency may b briefed directly by this Ministry in cases where intimation regarding hearing of suits is received very late and it is feared that adherence to the procedure as laid down is likely to cause delay. If you agree, the relevant rules of the Law Officers Rules will have to be suitably amended. Incidentally, it may be mentioned that this practice has already been obtained in other Provinces and has presented no difficulties so far.

Early reply is requested.

Yours faithfully,

Sd/- V. N. Bhide

(V. N. BHIDE)

Under Secretary to theGovernment of India.

Rjr/30/7
4 ..s.

WD 16/8
MS) 1646

No. 6724 25
Legal Department,
Bombay Castle, 4th September 1948

From

P.K.L d, Esquire, I. .S.,
Secr tary, to the Government of Bombay and
Remembrancer of Legal Affairs.
BOMBAY.

To

The Secretary to the Governm nt of India,
Ministry of Law,
N W DELHI.

Subject: Civil suits against the Government of India - in the Courts of the Province of Bombay.

Sir,

I am directed to invite your attention to the letter No. 4920-D/46 21st June 1946 from the Under Secretary to theGovernment of India, Ministry of Defence, (copy enclosed) and to state that the Government of Bombay fully endorses the proposal made in paragraph (2) thereof. The procedure alid down in rule 184 of the Law Officers Rules for the conduct of legal affairs does not work smoothly and strict adherence to it involves many practical difficulties. Even in cases where information regarding the institution of a suit against the Central Government is received in this Department within reasonable time, experience has shown that the indirect procedure of obtaining sanction from the Central Government and then instructing the District Government Pleader through the Remembrancer of Legal Affairs necessarily entails considerable delay.

2. This Government, therefore, feels that the time has arrived for establishing a direct connection between its Law Officers and the Government of India for the conduct of litigation in which that Government is involved. So far as original civil litigation in Bombay is concerned, the Remembrancer of Legal Affairs even today is not required to help. The Solicitor to the Government of India in Bombay is in sole charge of such matters. For mofussil litigation the Government of India.

has, in exercise of the powers under Order 27, rule 8b(a) of the Civil Procedure Code, appointed the Government Pleader in the High Court at Bombay and all District Government Pleaders to be the Crown Pleaders in relation to any suit by or against that Government. (vide Government of India Notification No. F. 83-I/46-L dated 19th July 1948 at p. 878 of the Gazette of India of 24th July 1948). It is suggested that for such litigation the Central Government may make arrangements for issuing instructions direct to the Government Pleader concerned either through the Ministry of Law or through their Solicitor in Bombay, if at all an intermediary in the Province is required. The interventio by this Department means delay and this office has found it difficult to prepare briefs by getting instructions in time or to advise the Law Officers at interim stages on its own authority.

3. I am accordingly to inform you that the Government of Bombay would beprepared to alter the procedure so as to place the services of its Law Officers directly at the disposal of the Government of India without the intervention of this Department except in cases where the real contending party is the Government of Bombay itself and the Government of India has been impleaded only as a formal party. If you are agreeable to this change of procedure steps will be taken to amend suitably the relevant provisions of the Law Officers Rules.

Yours faithfully,

Sd/- P.H.Mead

O.C.
Secretary to Government and -
Remembrancer of Legal Affairs, Bombay.

No. 6725
Legal Department,
Bombay Castle, 14th September 1948.

Copy forwarded with compliments to the Under Secretary to the Government of India, Ministry of Defence (Army Branch), New Delhi, with reference to his letter No. 4920-D-6, of 21st June 1948

Sd/- P.H.Mead

Secretary to Government and -
Remembrancer of Legal Affairs., Bombay.

Mjr/30/7
4 cs.

No. P.O.L.W.S.443
Godhra 27-10-48

To

The Secretary to Government,
Legal Department,
Bombay,

Subject : Government Pleaders' Opinion in matters of States intergrated with Panch-Mahals----------
Grant of fees for.

Opinion of the Government Pleader Panch Mahals was called for in two cases for deciding the question of ~~claim~~ claim put forth by Diwan Bahadur J.H. Mehta as High Court Judge of (1) Baria and (2) Chhota Udepur States now integrated with Panch Mahals district since 10-6-48.

The Government Pleader has now demanded fees of Rs. 20/- in each case for giving the above opinion and has given grounds on which his calim to such fees is based. Copy of his letter No. 84 D/ 4-10-48 is enclosed.

2. The Government Pleader has his jurisdiction over Panch Mahals District alone and it is not extended over States, as he has given opinion in matters relating to States over which he has no jurisdiction he is, it is believed, entitled to the fees for giving the aforesaid opinion.

I therefore solicit instruction whether my above presumption is correct and whether the Government Pleader may be given fees in the present and future cases until his jurisdiction is extended over States, or some other arrangements are made by Government.

Sd/-

District Magistrate and
Chief Administrator for
States , Panch Mahals

MJr/30/7
4 Cs.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 28th December 1948.

To

The District Magistrate and Chief
Administrator for States in Panch
Mahals District.

Sir,

With reference to your letter No. P.M.L. dated the 27th October 1948, I am directed to invite your attention to the provisions of Rule 43 of the Law Officer's Rules wherein the Government Pleader's duty to give opinions is not restricted to matters arising within the District. According to that rule, "it shall be the duty of a District Government Pleader and District Public Prosecutor to advise all local officers ------- on all legal matters concerning Government business of any kind which any such officer may refer to him". In this case, the opinion was sought in the discharge of your duties as a local officer exercising the additional functions of a Chief Administrator for the States concerned. The opinion was sought on a matter concerning Government business. The words "any kind" are very wide indeed and whether that business arises in connection with the regular district administration or administration under the Extra Provincial Jurisdiction Act, it is nonetheless Government business concerning which it was the duty of the Government pleader to advise you as local Officer. In these circumstances the claim put forward by the Government pleader cannot be sanctioned.

Yours faithfully,

Sd/- P.M.Lad

O.C. 28/12

Remembrancer of Legal Affairs.

Mjr, 30/7

4 Cs.

F. 37

No. 473 S-O. /4

GOVERNMENT OF INDIA
MINISTRY OF LAW.

From

POLS A MEHTA, ESQUIRE
2nd SOLICITOR TO THE GOVERNMENT OF INDIA.

To

P.N.Lad, Esqr, I.C.S.,
Secretary to the Government of Bombay and
Remembrancer of Legal Affairs, Bombay.

New Delhi, the 1st December 1948.

Sri,

With reference to your letter No 8724 of the 14th September, 1948, addressed to the Secretary of this Ministry I am directed to thank you for your acceptance of the proposal of the Ministry of Defence. I may however state that all that the Ministry of Defence desire is that in urgent cases the usual procedure of making a report to you and instructing the Government Pleader through you may be dispensed with. It is not necessary to change the present procedure but only to provide for dispensing with it when any Department of the Government of India is of the opinion that in any particular case there would not be sufficient time to make a report to you and in that even direct instructions may be given to the Government pleader concerned.

I trust you will have no objection to modifying the rules to give effect to this suggestion.

Yours faithfully,

(POLS A MEHTA)
2nd SOLICITOR TO THE GOVERNMENT OF INDIA.

MJr/30/7
4 Cs.

No. 3208
Legal Department.
Bombay Castle, 24t March 1949

From

P.B.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Legal Department.

To

The Second Solicitor to the Government of Indi
Ministry of Law.

NEW DELHI.

Subject: Civil Suits against the Government of India in the Courts of the Province of Bombay.

Sir,

With reference to your letter No. 473-S-O-/48, dated the 1st December 1948, I am directed to invite your special attention to paragraphs 1 and 2 of my letter No. 6724, dated the 18th September 1948 and to reiterate the considerations mentioned therein. Recent experience has further demonstrated the difficulty of securing information in time from the appropriate Departments of the Government of India concerned in litigation; and instances have even occurred where prompt co-operation from the Department was necessary and was not given. Time is needlessly wasted in taking every step in the litigation through the intervention of this Department. Besides the preliminary scrutiny of the legality or otherwise of actions which form the subject-matter of the litigation is not made, as it should be, by this Department before the decision is taken to prosecute or defend the proceedings. This Department is also not in possession of the advice given by the Ministry of Law concerning acts and policies which are eventually taken to the Court. The inevitable consequence is that it is found extremely difficult to conduct litigation on behalf of the Government of India with the same expedition and efficiency as in the case of the litigation of the Provincial Government wherein

this Department takes complete control, is fully posted with facts in due time, and finds it easy to follow up the advise it has already tendered.

2. I am, therefore, directed to reiterate the suggestion made in my last letter and to emphasize that in the interests of the smooth and efficient conduct of the litigation of the Government of India it is now absolutely necessary to eliminat the intermediation of this Department and to establish a nexus between the Ministry of Law (Government of India) and the Local Law Officers in this Province. Such nexus may be established either directly or if that is found inconvenient, through the Solicitors to the Central Government in Bombay who by virtue of their position will naturally find it easier to intermediate, advise, and generally to assist in the conduct of litigation.

3. I trust that on further consideration this proposal will be found acceptable and that you will endorse the change of procedure outlined particularly in paragraph [redacted] letter.

Yours faithfully,

Sd/- F...Lad

o.c.

Secretary to Government.

Mjr/30/7

4 Co.